

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

August 4, 2009 Minutes

Present: Jina Karampetsos Chair, David Gobeille, Lee Blais, John Bart, David DeAngelis, Raymond Trabulsi, Mark Enander, Attorney Joelle C. Sylvia (Town Solicitor Office)

Minutes

Motion made by Member Bart to accept the July 2009 minutes as presented. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Correspondence

Chair read into the record letter of resignation dated July 20, 2009 from Gabriella Halmi.

Other

Chair welcomed new Board member, Mark W. Enander.

Applications:

Omnipoint Communications, Inc. 15 Commerce Way, Suite B, Norton, MA 02766 – 28 Breakneck Hill Road, Lincoln, R.I. – Application for Use Variance for the operation of a wireless facility consisting of a 120 foot monopole tower on property located at 28 Breakneck Hill

Road, Lincoln, RI. AP 25, Lot 58 Zoned: RA-40

Represented by: Edward Pare, Esquire

This application was continued from the July agenda so applicant could research alternate locations for the proposed tower. Member Trabulsi did not sit on this application.

Attorney submitted into the record:

Exhibit #12 Determination of No Hazard To Air Navigation report dated June 22, 2009 and Exhibit #13 Area photos of balloon at 150 feet

Witness

Scott Adams

Applicant flew balloons at proposed height of 150 feet for visibility in neighborhood. The balloons were barely visible at tree line of 150 feet. Proposed height of tower will be 120 feet. Witness submitted into the record: Exhibit #14 Photo of balloons 4.5 feet in diameter

Witnesses

Jacqueline Murray, Site Acquisition Expert (colleague of Mark Cook who testified at the July meeting)

Motion made by Member Gobeille to accept Ms. Murray as an expert witness. Motion seconded by Member Blais. Motion carried with a 5-0 vote.

Witness submitted into the record Exhibit #15 and 16 – Proposed coverage in Lincoln with Map 20, Lot 14 and Lot 15 at 120 feet.

Alternate sites search:

Map 20, Lot 16 Route 146 - 6.77 acre lot with wetlands. Redundant coverage at 120 feet

Map 20, Lot 15 Breakneck Hill Road - At rear of 3 residential homes with dirt road access. Redundant coverage.

Map 20, Lot 23 Residential homes on Property

Map 20, Lot 34 Residential homes on Property

Map 20, Lot 145 Residential homes on Property

Map 25, Lot 38 Residential homes on Property

Map 25, Lot 18 Residential homes on Property

Map 25, Lot 19 Residential homes on Property

Map 25, Lot 23 Residential homes on Property

Map 25, Lot 27 Residential homes on Property

Map 25, Lot 35 Residential homes on Property

Map 25, Lot 36 Residential homes on Property

Map 25, Lot 37 Small parcel not conducive to wireless facility

Map 25, Lot 44 Lot adjacent to Pub Lodge, Breakneck Hill Road. High visible & close to road

Map 25, Lot 47 Route 146 – 4.93 acre lot with wetlands

Map 25, Lot 48 No contiguous coverage

Map 25, Lot 57 Breakneck Hill Road – commercial with office building .8 acre lot

Map 25, Lot 168 Office building with parking lot. Propane

tanks at site make it not usable

Map 43, Lot 16 Comcast tower on site. Land owned by State.

Map 43, Lot 17 CCRI Campus – not adequate coverage.

Witness

Mohammed Abraham, Radio Frequency Engineer (testified at the July meeting)

The police tower and water tank on Old River Road would not provide service. The police and water towers are 1.75 miles north of the proposed site.

Submitted into record:

Exhibit #17 T-Mobile USA vs. City of Anacortes United States Court of Appeals for the Ninth Circuit Opinion filed July 20, 2009

Exhibit #18 Police Tower report

Exhibit #19 Water Tower report

Chair read recommendations into the record at the July meeting.

Discussion:

Chair stated the applicant has demonstrated that proposed location for the tower would best serve the coverage area as alternate sites are not feasible. Russell Hervieux, Zoning Official informed the Board the code allows a 150 tower and what applicant is proposing is a 120 foot tower.

Motion made by Member Blais to grant the Use Variance for a 120 foot tower which is allowed under the 1996 Telecommunications Act. Motion seconded by Member Bart. Motion carried with a 5-0 vote.

Andover Way d/b/a Storage America, 3900 NW 2nd Avenue, Miami, FL – Application for Special Use Permit for the installation of signage on property located at 100 Higginson Ave, Lincoln, RI.

AP 1, Lot 133 Zoned: MG 0.5

Applicant had requested continuance to the August agenda at the July meeting. Russell Hervieux, Zoning Official addressed the Board stating there are zoning violations at the site and the application has been on the agenda for one year. He received an email from applicant asking for a continuance to the September agenda as applicant could not appear because of personal reasons. He asked if anyone else could appear on their behalf and applicant replied “no”. Chair stated the application would be continued one last time and asked Mr. Hervieux to send applicant a letter informing her.

Motion made by Member Bart to continue the application to September. Motion seconded by Member DeAngelis. Motion carried with a 4-1 vote with Member Blais voting against.

Dennis and Rita Caraccia, 393 Great Road, Lincoln, RI – Application for Dimensional Variance for two front entrances for property located at 1431 Smithfield Avenue, Lincoln, RI.

AP9, Lot 130 Zoned: RL 9

Member DeAngelis sat on this application with full privileges.

Russell Hervieux, Zoning Official stated because of a notice issue the application needed to be continued to the August agenda so proper notice could be served. No notices were returned.

Chair informed applicant that her application did not indicate what relief was being requested and no plans were attached. She further told her that they had received an unfavorable recommendation and if the application were denied she could not return for one year. It was applicant's understanding that her application was complete and asked what was missing. Chair replied that the town does not advise on applications. It is applicant's responsibility to make sure all documentation is included. Chair reiterated that there were no plans or surveys attached to reflect what type of relief applicant was seeking. Applicant replied she had attached a drawing from the Department of Transportation showing house was 25 feet from center of road. Chair replied that the state has nothing to do with town applications and there was not enough information provided for the Board to render a decision on the application and there is a non-conforming issue that needs to be addressed.

Applicant kept stating she has 25 feet to the front of the house from the center of the road and was informed by the Zoning Official she

needed to come before this Board. She wants to install a canopy over the stairs and handrails for safety. Kept asking what she needs to submit. Chair kept stating it is not the Board's responsibility to inform applicants on what needs to be submitted for hearing and perhaps she needed someone to counsel her on what to include in the application. Russell Hervieux, Zoning Official stated the setbacks are from the property line and not the center of the state road as shown on the Department of Transportation map. Applicant said she is seeking 7 feet of relief and has 12 feet frontage based on Department of Transportation survey on record at the State House.

Chair again informed applicant that the Board did not have proper information listed on the application and they were looking for a measurement from the stairs to the property line not the center of the road. On three separate occasions she reiterated that applicant did not need to hire an attorney but she needed direction on preparation of her application and asked if applicant wanted to proceed or continue the application to the next agenda. Member Blais addressed the Board stating many of the old state roads were described as right-of-ways and the property line is often determined from the center of the road

Applicant submitted DOT survey as Exhibit #1.

Chair stated she wanted to be certain about the relief that was being requested and measuring from the center of the road is an unusual method of determining frontage. She was having a difficult time with

accuracy and would have liked to have seen a survey attached to the application. Chair asked Russell Hervieux, Zoning Official if he knew what amount of relief applicant was seeking. Mr. Hervieux was not sure as the survey does not show where the property line is. Member Blais asked Mr. Hervieux why she was before Board. Mr. Hervieux replied applicant started installing stairs and a canopy above the stairs on a non-conforming building and a cease and desist order was issued. Member Blais moved for allowance of the application. Chair replied she could not entertain the motion at present time. Chair then asked applicant what amount of relief she was requesting and applicant replied she was not sure.

Chair read Technical Review Committee recommendation into the record:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The proposed dimensional variances are to permit two covered entrances on the house. The Planning Board recommends Approval of this application. The Planning Board finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

Discussion:

Member Blais reiterated this section of Great Road is the oldest in the country. The footprint is not being enlarged and does not feel

applicant should be before the board.

Motion made by Member Blais to grant the application. Motion not seconded. Motion failed and application denied.

Annamaria Salisbury, 430 New River Road, Manville, RI – Application for Use Variance for placement of an accessory structure in front yard of the property.

AP 34, Lot 454 Zoned: RS 20

Represented by: Wayne Salisbury, Owner

Member Trabulsi sat on this application with full privileges.

Chair read standards into the record. Applicant's property corner lot adjacent to Creek Bridge with sloping property to Providence/Worcester Railroad at the rear. Shed currently in front yard sits 27 off the street. Existing deck and pool to the rear of property behind white fence. Proposed location for shed is best alternative. Existing fence completely surrounds back yard. A camper is also stored behind the property. Shed will be used for storage. Has four children who have cars and garage space is needed. Shed is painted to match existing house and applicant intends to plant shrubbery around the shed.

Chair read Technical Review Committee recommendation into the record:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Denial of the application for a use variance. The Board feels that the application does not meet any of the standards for relief of a use variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The applicant already has a shed in the back yard of the property as well as a pool, a deck and a camper. The Planning Board feels that the use variance will alter the general character of the surrounding area and will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.

In Favor:

Michael Gravier, 427 New River Road, Lincoln, RI

His home faces applicant. Shed is well made and looks good.

No opposition present.

Chair stated the shed is already built and does not conform but it is difficult to place it at the rear of property because of sloping grade.

Member Blais concurred with Chair.

Motion made by Chair to grant the Use Variance stating:

- The hardship from which the applicant seeks relief is due to the**

unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.

- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.
- The relief requested is the least relief necessary.
- The subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Zoning Ordinance.

Motion seconded by Member Blais. Motion carried with a 5-0 vote.

Century Drywall LLC, 1992 Louisquisset Pike, Lincoln, RI – Application for Special Use Permit to house vehicles, equipment and materials in warehouse located at 1992 Louisquisset Pike, Lincoln, RI.

AP 31, Lot 45 Zoned: BL 0.5

Represented by: Michael Elliott

Member Trabulsi sat on this application with full privileges. Chair read standards into the record.

Lot 44 received approval in 1998 to build a warehouse. November 2003, applicant received letters from the Town that Lots 44 and 45

were in compliance for a Special Use granted October 2, 2001 and building permits were issued in 1998 for the new warehouse. Use of warehouse is to store equipment and construction materials has not changed.

Chair read recommendations of Technical Review Committee into the record.

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The proposed special use permit is to clear up a pre-existing nonconformance of this parcel of land. The Planning Board recommends Approval of this application. The Planning Board finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

Motion made by Member Gobeille to grant the requested Special Use Permit stating:

- That the Special Use is specifically authorized under this Ordinance
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use
- That the granting of the Special Use will not alter the general character of the surrounding area
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan

Motion seconded by Member Bart. Motion carried with a 5-0 vote.

**Century Drywall LLC, 1992 Louisquisset Pike, Lincoln, RI –
Application for Dimensional Variance seeking 13 feet height relief and
parking relief from 52 to 42 spaces for property located at 1988
Louisquisset Pike, Lincoln, RI. AP 31, Lot 44 Zoned: BL 0.5
Represented by: Michael Elliott**

**Member Trabulsi sat on this application with full privileges. Chair
read standards into the record.**

**Applicant wants to modernize office facility and build a new office
building on 3.5 acres which has wetlands on site. Problem in
designing the building was the footprint size did not accommodate
the original proposed building. Applicant is now considering a five
story office building and needs height relief. Department of
Environmental Management (DEM) wants them to stay 40 feet from an
existing stream.**

Witness

John Ohearn

**Proposed building will look similar to the hotel on Route 116 with an
open floor plan and 3,000 square feet on each floor. Access to the
site will be by Albion Road. They will not lease out any office space
and 26 parking spaces will be on site with 42 parking spaces between
the two lots.**

Mr. Elliott stated there will be 22 employees on this lot and they are not intensifying use of the property. Customers do not come on site.

Witness

Brian Pullman

He dealt with DEM on this application. This lot is not serviced by town sewer but applicant will extend the sewer line and connect. DEM gave applicant guidelines to work with. Wetlands were created when the mall was built by water runoff.

Mr. Elliott has no present plans for signage on the building but will comply with town ordinances of 64 square feet if they change their mind. Short pole lights will illuminate the parking area. Submitted into the record as Exhibit #1 site lighting diagram. Twelve foot pole lights will face downward.

Attorney Joelle Sylvia informed the Board that plans presented indicated more than ten parking spaces on the other lot. Applicant did not appear before the Board to change their plans and established reasons for the requested relief.

Motion made by Member Bart to grant 13 feet height relief and allow 26 parking spaces for this lot with a condition that the remaining 16 parking spaces be used on Lot 36 across the street.

He further stated:

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.
- The relief requested is the least relief necessary.
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property

Motion seconded by Chair Karampetsos. Motion carried with a 5-0 vote.

Century Drywall LLC, 1992 Louisquisset Pike, Lincoln, RI – Application for Special Use Permit for additional parking for proposed building property located at 1987 Louisquisset Pike, Lincoln, RI.
AP 31, Lot 36 Zoned: BL 0.5

Mr. Elliott addressed the Board stating the applicant is asking for 16 additional parking spaces for commercial offsite parking. Applicant purchased the lot and installed drainage. Entrance to parking will be

from Albion Road. Pole lights will illuminate the parking spaces. They have 22 employees on site and hours of operation are 6:00am to 6:00 pm.

Attorney Joelle Sylvia informed the Board that Planning Board recommended approval of the application with a condition that the lot be used for Lot 44 parking.

Motion made by Member Blais to approve the application with a condition that the two parcels will not be conveyed separately and the application granted for Lot 44 and the two other applications be linked. He further stated:

- That the Special Use is specifically authorized under this Ordinance
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use
- That the granting of the Special Use will not alter the general character of the surrounding area
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan

Motion seconded by Member Trabulsi. Motion carried with a 5-0 vote.

Motion made by Member Bart to adjourn the meeting. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Respectfully submitted,

Ghislaine D. Therien

Recording Secretary